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Filing date: **06/11/2020**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |  |
|------------------------|--|
| Proceeding             | 91233690   |
| Party                  | Plaintiff<br>Image Ten, Inc.   |
| Correspondence Address | CECILIA DICKSON<br>THE WEBB LAW FIRM PC<br>420 FT DUQUESNE BLVD SUITE 1200<br>PITTSBURGH, PA 15222<br>UNITED STATES<br>cdickson@webblaw.com, csherwin@webblaw.com, trademarks@webblaw.com, gvadala@webblaw.com<br>412-471-8815 |
| Submission             | Motion to Strike   |
| Filer's Name           | Cecilia R. Dickson   |
| Filer's email          | cdickson@webblaw.com, csherwin@webblaw.com, gvadala@webblaw.com, trademarks@webblaw.com  |
| Signature              | /Cecilia R. Dickson/   |
| Date                   | 06/11/2020   |
| Attachments            | Motion to Strike Unidentified Witness from Applicants Pretrial Disclosures List.pdf(574262 bytes )   |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

|                        |   |                                |
|------------------------|---|--------------------------------|
| IMAGE TEN, INC.,       | ) | Opposition No.: 91233690       |
|                        | ) |                                |
| Opposer,               | ) | Application No.: 87/090,468    |
|                        | ) |                                |
| v.                     | ) | Mark: NIGHT OF THE LIVING DEAD |
|                        | ) |                                |
| RUSTY RALPH LEMORANDE, | ) | Filed: June 30, 2016           |
|                        | ) |                                |
| Applicant.             | ) |                                |

**IMAGE TEN’S MOTION TO STRIKE UNIDENTIFIED EXPERT  
WITNESS FROM APPLICANT’S PRETRIAL DISCLOSURES LIST**

In response to Applicant Rusty Ralph Lemorande’s Pretrial Disclosures served on June 2, 2020 (copy attached as Exhibit A), and pursuant to TMEP § 533.02(b), Opposer Image Ten Inc. moves to strike Applicant’s unidentified expert witness from Applicant’s Pretrial Disclosures List. TMEP § 533.02(b) states, “[p]retrial disclosures require that a party, in advance of the presentation of its testimony, inform its adversary of the names of, and certain minimal identifying information about, the individuals who are expected to, or may, if the need arises, testify at trial.” Applicant listed a “copyright/trademark expert to be named” at a later date. Good cause exists for this motion because Applicant failed to follow proper procedure when identifying potential witnesses for Applicant’s trial period, and Opposer will be prejudiced by any late disclosure of a proposed expert out of the normal time for disclosure of any such proposed expert. Opposer respectfully moves the Board to strike this unidentified witness from Applicant’s Pretrial Disclosures List and preclude any and all evidence, submissions, or reference to any such proposed expert in these proceedings.

**STATEMENT OF THE RECORD**

Opposer brings to the Board's attention that Applicant previously filed on April 20, 2020, a motion to reopen Applicant's trial period and requested an extension of the outstanding deadlines for this opposition proceeding. *See* TTABVUE # 57. It is the Opposer's assumption that, based on the current schedule set and the date of service of the Applicant's Pretrial Disclosures, Applicant's trial period now ends on July 17, 2020 and Opposer's deadline for filing its Rebuttal Disclosures is August 1, 2020.

WHEREFORE, Opposer respectfully requests that the Court strike the unidentified expert witness from Applicant's Pretrial Disclosures List and preclude any further reference to such proposed expert.

Respectfully submitted,

**THE WEBB LAW FIRM**

Dated: June 11, 2020

*s/ Cecilia R. Dickson*

Cecilia R. Dickson (PA ID No. 89348)

Christopher P. Sherwin (Reg. No. 67923)

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*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> day of June, 2020, I electronically filed the foregoing **IMAGE TEN'S MOTION TO STRIKE UNIDENTIFIED EXPERT WITNESS FROM APPLICANT'S PRETRIAL DISCLOSURES LIST** with the TTAB using the ESTTA system.

A true and correct of same was also served, via email, upon the following:

Rusty Ralph Lemorande  
1245 North Crescent Heights Blvd., #B  
Los Angeles, CA 90046  
lemorande@gmail.com

**THE WEBB LAW FIRM**

s/ Cecilia R. Dickson  
Cecilia R. Dickson

# EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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| Opposer,               | ) | Application No.: 87/090,468    |
|                        | ) |                                |
| v.                     | ) | Mark: NIGHT OF THE LIVING DEAD |
|                        | ) |                                |
| RUSTY RALPH LEMORANDE, | ) | Filed: June 30, 2016           |
|                        | ) |                                |
| Applicant.             | ) |                                |
|                        | ) |                                |

**APPLICANT’S PRETRIAL DISCLOSURES**

Pursuant to Rule 2.121(e) and Rule 26 of the Federal Rules of Civil Procedure, Ralph Lemorande, (“Applicant”) makes the following Pretrial Disclosures to Image Ten, Inc. (“Opposer”). In addition to the information disclosed below, Applicant hereby identifies and incorporates by reference any other witness or document disclosed by Opposer in its Pretrial Disclosures.

Applicant identifies the following witnesses who Opposer expects to call to testify in this matter as follows:

| WITNESS NAME                                     | ADDRESS/TELEPHONE<br>NUMBER                                  | SUBJECTS ON WHICH<br>WITNESS IS EXPECTED TO<br>TESTIFY AND DOCUMENTS<br>EXPECTED TO BE<br>INTRODUCED   |
|--|--|--|
| Mr. Russ Streiner<br>Director of Image Ten, Inc. | Image Ten, Inc.<br>361 Prospect Road<br>Evans City, PA 16033 | Mr. Streiner is one of the original filmmakers of the film entitled “NIGHT OF THE LIVING DEAD”. He can testify as to the film’s early entry into the public domain, including the reasons, and confirm the actions or non-actions of Image Ten (Opposer) during the past half-century to protect the brand, including the failure to seek a mark registration 2017 during the past |

| WITNESS NAME                                      | ADDRESS/TELEPHONE NUMBER                                     | SUBJECTS ON WHICH WITNESS IS EXPECTED TO TESTIFY AND DOCUMENTS EXPECTED TO BE INTRODUCED  |
|---|--|---|
|   |  | <p>past half-century to protect the brand, including the failure to seek a mark registration, the failure to notice, or seek cancellation of, any third party use along with other matters pertinent to the Opposition proceeding including the enforcement (or lack of) licensing associated with the film to extent allowed by law. In addition, Mr. Streiner can testify as to the dissolution of Image Ten, Inc. as an entity in <b>March 1967</b>, dissolved two years later, and the reasons for creating a new business entity entitled Image Ten, Inc. in <b>May 2017</b>, <i>subsequent</i> to Applicant's filing of its Intent To Use Application.</p> <p>Documents sought include documents concerning Opposer's financial information documents generally and especially concerning alleged licensing of the NIGHT OF THE LIVING DEAD, valid or invalid, documents concerning use of the NIGHT OF THE LIVING DEAD mark, documents concerning attempted enforcement of Opposer's alleged trademark rights, documents concerning printed publications and materials featuring Opposer's alleged marks, discovery requests and responses from this opposition, pleadings from this opposition.</p> |
| Mr. Jim Cirronella<br>Director of Image Ten, Inc. | Image Ten, Inc.<br>361 Prospect Road<br>Evans City, PA 16033 | Mr. Cirronella, as a recent partner, employee, or executive of Image Ten, recently  |

| WITNESS NAME | ADDRESS/TELEPHONE<br>NUMBER | SUBJECTS ON WHICH<br>WITNESS IS EXPECTED TO<br>TESTIFY AND DOCUMENTS<br>EXPECTED TO BE<br>INTRODUCED   |
|--------------|-----------------------------|--|
|              | <hr/>                       | <p>established in <b>May 2017</b> (subsequent to the filing of Applicant's Intent to Use application), may have pertinent and dispositive information in addition to that provided or known by Mr. Russ Streiner and Mr. Gary Streiner. This information is thereby sought by Applicant.</p> <p>Documents sought include documents concerning Opposer's financial information documents concerning alleged licensing of the NIGHT OF THE LIVING DEAD, valid or invalid, documents concerning use of the NIGHT OF THE LIVING DEAD mark, documents concerning attempted enforcement of Opposer's alleged trademark rights, documents concerning printed publications and materials featuring Opposer's alleged marks, discovery requests and responses from this opposition.</p> |



| WITNESS NAME                                     | ADDRESS/TELEPHONE<br>NUMBER                                  | SUBJECTS ON WHICH<br>WITNESS IS EXPECTED TO<br>TESTIFY AND DOCUMENTS<br>EXPECTED TO BE<br>INTRODUCED   |
|--|--|--|
|  |  |  |
| Mr. Gary Streiner<br>Director of Image Ten, Inc. | Image Ten, Inc.<br>361 Prospect Road<br>Evans City, PA 16033 | Mr. Gary Streiner as a director and/ executive of Image Ten, an entity recently established in <b>May 2017</b> , may have pertinent and dispositive information in addition to that provided or known by Mr. Russ Streiner, Mr. Gary Streiner, and Mr. Jim Cironella. This information is thereby sought by Applicant. |
| Copyright/Trademark Expert<br>To Be Named        | To be advised.   | It may be helpful to the TTAB to resolve issues, possibly raised by Opposition, as to the copyright status of the motion picture "Night Of The Living Dead". An expert in copyright, particularly as it relates to trademark law and practice, would be helpful in this opposition.                                    |



Respectfully submitted,

**Ralph Lemorande**

Dated: Jun 2, 2020

/Ralph Lemorande/

P.O. Box 46771

Los Angeles, CA 90046

1 323 309 6146

lemorande@gmail.com

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of these **APPLICANTS'S PRETRIAL DISCLOSURES** were served this 2nd day of June, 2020, upon the following via electronic mail:

Cecilia R. Dickson  
Christopher P. Sherwin

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[trademarks@webblaw.com](mailto:trademarks@webblaw.com)

**Ralph Lemorande**

/Ralph Lemorande/

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